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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 PETER J. MCDANIELS,

11 Plaintiff,

12 v.

13 KATHLEEN PREITO, et al.,

14 Defendants.

CASE NO. 3:17-cv-05801-RBL-DWC

ORDER DENYING MOTION TO
SERVE AND MOTION FOR
EXTENSION OF DISCOVERY
DEADLINE

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16 The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United
17 States Magistrate Judge David W. Christel. Plaintiff Peter J. McDaniels, proceeding *pro se* and
18 *in forma pauperis*, filed this lawsuit on October 4, 2017. Dkt. 1. Pending before the Court is
19 Plaintiff's Motion to Serve Subpoena (Dkt. 33) and Motion for Extension of Time (Dkt. 34).
20 After review of the record, both Motions (Dkts. 33, 34) are denied.

21 **I. Motion to Serve Subpoena**

22 Plaintiff has filed a Motion to Serve Subpoena, asking the Court to direct the Clerk to
23 issue subpoenas for video tapes allegedly in possession of Defendants. Dkt. 33. Generally, *pro se*
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1 parties may be entitled to the issuance of a subpoena commanding the production of documents
2 from a nonparty, subject to certain requirements. *See* Fed. R. Civ. P. 26(b), 34(c), 45. However,
3 courts “will consider granting such a request only if the documents sought from the nonparty are
4 not equally available to Plaintiff and are not obtainable from Defendant through a request for
5 production.” *Sessing v. Sherman*, No. 1:13-cv-01684-LJO-MJS (PC), 2016 WL 5093929 at *2
6 (E.D. Cal. July 18, 2016) (citing Fed. R. Civ. P. 34); *see also Kitchens v. Tordsen*, No. 1:12-cv-
7 0105-SWI-MJS (PC), 2014 WL 4418108 at *1 (E.D. Cal. Sept. 5, 2014). Before the Court will
8 consider serving a subpoena, a plaintiff must first attempt to acquire the materials through the
9 discovery process and then, if a defendant refuses to produce the discovery, filing a motion to
10 compel. *See Sessing*, 2016 WL 5093929 at *2; *Kitchens*, 2014 WL 4418108 at *1.

11 Here, Plaintiff requests the Court direct the Clerk to issue subpoenas regarding two
12 surveillance videos allegedly in Defendants’ possession and containing allegedly relevant
13 evidence. Dkt. 33. However, Plaintiff has not shown whether he attempted to utilize the
14 discovery process to acquire these videos and the record reflects Plaintiff has not filed a motion
15 to compel attempting to acquire the videos. *See* Dkt. 19. Further, Defendants have stated serving
16 the subpoena would be fruitless because the video surveillance Plaintiff requests never existed.¹
17 Dkt. 35. Thus, Plaintiff is not entitled to have the Court direct service of his subpoenas.
18 Therefore, the Court denies Plaintiff’s Motion to Serve Subpoena (Dkt. 33).

19 II. Motion for Extension of Time

20 Pursuant to Federal Rule of Civil Procedure 16(b)(4), a scheduling order may be
21 modified for good cause and with the judge’s consent. Plaintiff requests an extension of 90 days
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23 ¹ Plaintiff argues Defendants should be subject to sanctions because he alleges the videos did exist, but
24 Defendants purposefully destroyed them. Dkt. 39, p. 3. However, Plaintiff has provided no evidence to support this
allegation, and so the Court declines to impose sanctions at this time.

1 because “the defendants have produced ZERO responses” to his discovery requests. Dkt. 34.
2 Defendants responded, stating that they are working with Plaintiff on his discovery requests to
3 see if any outstanding discovery issues can be resolved with supplemental answers. Dkt. 37.
4 They also state they have provided Plaintiff with 743 pages of responsive documents in response
5 to Plaintiff’s 281 discovery requests as of August 20, 2018. Dkt. 38. They further note they
6 received additional discovery requests on August 10, 2018, which they were still processing as of
7 August 20, 2018. *Id.*

8 Based on the record before the Court, an extension of the discovery period is not
9 warranted here. The Court’s original Scheduling Order, filed on December 15, 2017, set the
10 discovery deadline to June 13, 2018. Dkt. 18. Upon a motion from Plaintiff, the Court extended
11 that deadline to September 14, 2018. Dkt. 32. Plaintiff has thus had nine months to complete
12 discovery. Though Plaintiff argues Defendants have not provided him discovery, the evidence
13 submitted by Defendants contradicts that assertion. *See* Dkt. 37. The record reflects Defendants
14 have consistently worked with Plaintiff to resolve discovery disputes, have already produced
15 substantial discovery, and are continuing to process Plaintiff’s additional discovery requests. The
16 Court thus finds Plaintiff has not shown good cause for an extension of the discovery deadline.
17 Therefore, the Court denies Plaintiff’s Motion for Extension of Time (Dkt. 34).

III. Conclusion

For the reasons stated herein, Plaintiff's Motion to Serve Subpoena (Dkt. 33) and Motion for Extension of Time (Dkt. 34) are denied. The discovery deadline remains at September 14, 2018, and the dispositive motions deadline remains at October 12, 2018.

Dated this 19th day of September, 2018.

St Christel

David W. Christel
United States Magistrate Judge